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Earth Jurisprudence and the Myth of Gaia

1. Law and Earth

The many interrelated crises affecting our contemporary world are at least partly related to our rigidly anthropocentric culture, in which science, philosophy and the law have been used to legitimise social and ecological destruction for the sake of short-term human interests. Western philosophy – with its roots in ancient Greek, Jewish and Christian cultures and, more recently, influenced by the mechanistic view of nature promoted by philosophers and scientists such as Galileo, Bacon, Descartes, and Newton – has traditionally placed nature outside of the moral and legal community.[1] With the rise of modern science, the earth began to be seen as a mere resource and "the universe as a collection of objects rather than a communion of subjects."[2] Based on a dualistic approach that counterposes nature to man, as well as to culture and society, and on "a mode of consciousness that has established a radical discontinuity between the human and other modes of being and the bestowal of all rights on the humans,"[3] our chief institutions – including religion, education, politics and the law – give intrinsic value only to humans, while the rest of the world is deemed significant only in relation to its usefulness to us. Consequently, "the governance systems of most countries and of the international community facilitate and legitimise the exploitation and destruction of Earth by humans."[4]

Earth Jurisprudence is an emerging legal theory that invites us to rethink this anthropocentric bias of Western culture, calling for a shift in our understanding of law, governance and nature.[5] The ideas that led to its birth originated as early as 1949 in a pioneering work by Aldo Leopold, *A Sand County Almanac*, in which the author famously argued that "A thing is right when it tends to preserve the

1 See Judith E. Koons, "Earth Jurisprudence: The Moral Value of Nature," *Pace Environmental Law Review* 25.2 (2008): 263–339, 263–264. In footnote 5, Koons also mentions some interesting sources in support of this idea. Among them, see: Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* [2002] (White River Junction: Chelsea Green Publishing, 2011), 44–46.

2 Thomas Berry, *The Great Work: Our Way into the Future* [1999] (New York: Crown, 2011), 16.

3 Berry, *The Great Work*, 4.

4 Cullinan, *Wild Law*, 29.

5 See Koons, "Earth Jurisprudence," 264.

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integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise."[6]

Carl Schmitt also acknowledged the close relationship between the earth and the law in *Land and Sea* as well as in *The Nomos of the Earth:*

> Man lives, moves and walks on the firmly grounded Earth. It is his standpoint and his base. He derives his point of view from it, which is also to say that his impressions are determined by it and his world outlook is conditioned by it. Earth-born, developing on it, man derives not only his horizon from it, but also his poise, his movements, his figure and his height.[7]

> In mythical language, the earth became known as the mother of law. [...] In this way, the earth is bound to law in three ways. She contains law within herself, as a reward of labour; she manifests law upon herself, as fixed boundaries; and sustains law above herself, as a public sign of order. Law is bound to the earth and related to the earth.[8]

According to Schmitt, land appropriation is "the primeval act in founding law"[9] and it is in fact frequently found in myths of origin. In particular, Schmitt mentions the Biblical story of Joshua's conquest of Israel[10] and the Greek myth of Heracles as acts of land appropriation that gave birth to new legal orders: "Heracles is the mythical founder of order. Given that he "appropriated" the cattle of the three-headed giant, he creates the law; the Nahme – the *nomos* – transformed power into the law."[11] As we will see, Earth Jurisprudence suggests precisely that we substitute these old unecological stories of origin – which have promoted and legitimised the human exploitation of nature – with new, more environmentally friendly ones, such as the myth of Gaia.

Rachel Carson's *Silent Spring* (1962) played a key role in alerting public opinion to the dangers of pollution and is considered by many the most important environmental book of the twentieth century.[12] Interestingly, *Silent Spring* opens with "A Fable for Tomorrow," a fictional narrative which describes an idyl-

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6 Aldo Leopold, *A Sand County Almanac* [1949] (Oxford, New York: Oxford University Press, 2001), 189.

7 Carl Schmitt, *Land and Sea: A World-Historical Meditation*, trans. Simona Draghici [first German edition 1942] (Washington DC: PlutarchPress, 1997), 1.

8 Carl Schmitt, *The* Nomos *of the Earth in the International Law of the* Jus Publicum Europaeum, trans. G.L. Ulmen [first German edition 1950] (New York: Telos, 2006), 42.

9 Schmitt, *The* Nomos *of the Earth,* 45.

10 Carl Schmitt, "Appropriation/Distribution/Production: An Attempt to Determine from *Nomos* the Basic Questions of Every Social and Economic Order," Appendix 1 to Schmitt, *The* Nomos *of the Earth*, 329.

11 Carl Schmitt, "*Nomos-Nahme*-Name," Appendix 2 to Schmitt, *The* Nomos *of the Earth*, 342, footnote 19.

12 Rachel Carson, *Silent Spring* [1962] (Boston, New York: Mariner Books, 2002).

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lic city destroyed by pollution: such poetic opening certainly contributed to the popularity of the book and this in turn demonstrates the power of fables in influencing public policies. In fact, Carson's book has had a tremendous impact on the birth of contemporary environmentalism as well as on environmental law, and it is said to have inspired many pieces of legislation, most notably the 1972 ban on DDT in the United States. However, her perspective was actually more scientific than legal.

The real milestones in the development of Earth Jurisprudence are Cristopher Stone's seminal work "Should Trees Have Standing?"[13], which considered whether trees should be given legal rights and personhood, and Thomas Berry's *The Great Work*, in which the author called for a "new jurisprudence" aimed at "articulating the conditions for the integral functioning of the Earth process, with special reference to a mutually-enhancing human Earth relationship."[14]

The term Earth Jurisprudence was first proposed by Thomas Berry himself during a Gaia Foundation meeting held at Airlie House, Washington, in April 2001.[15] Soon afterwards, Cormac Cullinan proposed the term "Wild Law" to refer to the "expression" of Earth Jurisprudence, that is, an approach to human governance that "seeks both to foster passionate and intimate connections between people and nature and to deepen our connection with the wild aspect of our own natures."[16] Aware of the inherent contradiction in terms between "wild" and "law," with the former referring to something "unkempt, barbarous, unrefined, uncivilised, unrestrained, wayward, disorderly, irregular, out of control, unconventional, undisciplined, passionate, violent, uncultivated, and riotous" and the latter "intended to bind, constrain, regularise and civilise" and to "clip, prune and train the wilderness of human behavior into the manicured lawns and shrubbery of the civilised garden," Cullinan argues that "[i]t

13 Christopher D. Stone, "Should Trees Have Standing?: Toward Legal Rights for Natural Objects," *Southern Californa Law Review* 45 (1972): 450–501.

14 Berry, *The Great Work*, 61. It is interesting to note that Thomas Berry was also a Catholic priest of the Passionist order and he actually called on Christianity to respond to the environmental crisis with a unified sense of the sacredness of the universe and the interrelatedness of the Earth community.

15 Thomas Berry, "Airlie Principles," approved at the 1st Earth Jurisprudence meeting (Washington, April 2001), available at http://www.gaiafoundation.org/sites/default/files/documents/Thomas%20Berry%20Airlie%20Principles%202001.pdf (last access February 1, 2016). On this, see Koons, "Earth Jurisprudence," and Mike Bell, "Thomas Berry and an Earth Jurisprudence: An Exploratory Essay," *The Trumpeter* 19.1 (2003): 69–96.

16 Cullinan, *Wild Law*, 30.

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is precisely the rigidity of this false dichotomy between the 'wild' and 'law,' between 'nature' and 'civilisation,' that we need to overcome."[17]

Moreover, according to Cullinan,

> if laws are to be effective they need to recognise the inherent nature of the subject-matter with which they are concerned. This means that a governance system must to some extent reflect, or at least correspond with, the qualities of that which it is seeking to regulate. For example, if we observe that one of the qualities of the environment is that it is constantly changing, we need environmental laws and governance structures that are flexible and adaptable.[18]

As we are part of nature and not separate from it, our legislation should conform to the patterns of nature and our forms of governance should be consistent with the basic principles of the Earth system. Cullinan thus suggests that we draw inspiration from the rich diversity of natural patterns, structures and processes for reforming our legislation, pointing out that there are already some "flashes" of wild law in our current legal and political systems: "Wildness can be glimpsed in laws that reserve a certain amount of water to the river in order that it may flow healthily, and in international declarations that assert the inherent value of all living organisms and of biological diversity itself."[19]

More specific examples of an Earth-Jurisprudence approach in existing legislation include a 2002 amendment to the German Constitution (paragraph 20(a)), which recognises that the state has a responsibility to protect animals as well as humans; the 2008 Ecuadorian Constitution, which states that "Nature or Pacha Mama, from which life reproduces and enfolds itself, has the right to the integral respect for its existence and the maintenance and regeneration of its vital cycles, structures, functions and evolutionary processes"; and the 2010 Bolivian Law of the Rights of Mother Earth, which recognises the Rights of Mother Nature to life, diversity and balance, and requires the State and citizens to respect Earth's rights, endorsing principles such as the common good, interculturalism and the non-commodification of Nature.[20]

17 Cullinan, *Wild Law*, 29 – 30.

18 Cullinan, *Wild Law*, 26.

19 Cullinan, *Wild Law*, 31.

20 For more examples and a more detailed analysis of the topic, see: The Gaia Foundation & UK Environmental Law Association, "Wild Law: Is There Any Evidence of Earth Jurisprudence in Existing Law and Practice?" (2009), Research Supervisor Lynda Warren, Main Authors Begonia Filgueria and Ian Mason, available at http://www.gaiafoundation.org/sites/default/files/documents/Gaia%20%20UKELA%20Wild%20Law%20Report%202009.pdf (last access February 1, 2016).

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A famous case, frequently quoted by Earth-Jurisprudence sources, is the agreement signed on August 30, 2012, by the Whanganui River Iwi indigenous community and New Zealand Government. The indigenous community has always had a strong spiritual and cultural relationship with the River, based on the principle "I am the river and the river is me" ("*Ko au te awa, Ko te awa ko au*"), and it has been advocating for the legal recognition of the Rights of the River since 1873. The 2012 agreement finally recognises the Whanganui River as an integrated and living entity and the Whanganui River Iwi (Maori) as her Custodians, who are entrusted to protect the river's interests just like legal guardians represent children today. In fact, the agreement also grants the river personhood status, making her a proper legal person – "in the same way a company is, which will give it rights and interests"[21] – and the owner of her own river bed.[22]

However, even if these documents embody many of the values promoted by Earth Jurisprudence, the legal systems to which they belong are fundamentally opposed to prioritising these values. This is demonstrated by several instances: for example, despite a global campaign in its support, the United Nations have not yet endorsed the 2010 "Declaration on the Rights of Mother Earth." So, "[r]eforming national legislation and entering into new international agreements [is] insufficient" if this is not done "on the basis of a new understanding that the essential *purpose* of human governance systems should be to support people to play a mutually enhancing role within the community of life on Earth"[23]: in other words, the principles of Earth Jurisprudence can only succeeed if our whole understanding of law is reconceptualised and set in a context wider than humanity, a context in which human laws comply with the laws of nature.

21 Words of a spokesman for the New Zealand Minister of Treaty Negotiations, quoted in Kate Shuttleworth, "Agreement entitles Whanganui River to legal identity," New Zealand Herald (August 30, 2012), available at http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10830586 (last access February 1, 2016).

22 See: Global Alliance for the Rights of Nature, "Whanganui River given rights as a legal identity," (September 8, 2001), available at http://therightsofnature.org/rights-of-nature-laws/whanganui-river-given-rights-as-a-legal-identity/ (last access February 1, 2016); and The Gaia Foundation, "Earth Law Precedents," available at http://www.gaiafoundation.org/earth-law-precedents (last access February 1, 2016).

23 Cullinan, *Wild Law*, 29.

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2. Myths and fables

Earth Jurisprudence is fundamentally based on a fable: the story of Gaia. This fable has the sacredness of a story of origin, a myth of creation that explores the meaning of the universe and our role within it.[24]

Myths of creation represent the primary story on which all other stories are based:

> Myth narrates a sacred history; it relates an event that took place in primordial Time, the fabled time of the "beginnings." In other words myth tells how, through the deeds of Supernatural Beings, a reality came into existence, be it the whole of reality, the Cosmos, or only a fragment of reality – an island, a species of plant, a particular kind of human behavior, an institution. Myth, then, is always an account of a "creation"; it relates how something was produced, began *to be*.[25]

According to Northrop Frye, "Man lives, not directly or nakedly in nature like the animals, but within a mythological universe, a body of assumptions and beliefs developed from his existential concerns."[26] Myths of creation thus belong to every age and every culture, and they allow us to make sense of our lives and find our place in the world.

> Throughout the inhabited world, in all times and under every circumstance, the myths of man have flourished; and they have been the living inspiration of whatever else may have appeared out of the activities of the human body and mind. It would not be too much to say that myth is the secret opening through which the inexhaustible energies of the cosmos pour into human cultural manifestation. Religions, philosophies, arts, the social forms of primitive and historic man, prime discoveries in science and technology, the very dreams that blister sleep, boil up from the basic, magic ring of myth.[27]

Myths of creation foster "harmony between people and the universe, between the microcosm and the macrocosm, the part and the whole."[28] They have a universal dimension as well as a local cultural dimension. The different stories of origin believed in all over the world "are central as to how people within their

24 Jules Cashford, *Gaia: From Story of Origin to Universe Story* (London: Gaia Press, 2010), 5.
25 Mircea Eliade, *Myth and Reality*, trans. Willard R. Trask [1963] (Long Grove: Waveland Press, 1998), 5 – 6.
26 Northrop Frye, *The Great Code: The Bible and Literature* [1982], Collected Works of Northrop Frye, vol. 19 (Toronto: University of Toronto Press, 2006), 12.
27 Joseph Campbell, *The Hero with a Thousand Faces* [1949] (Novato: New World Library, 2008), 1.
28 Cashford, *Gaia*, 5.

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own unique culture are going to live and what they will value."[29] In fact, myths have also been used to legitimate legal discourse and the social order.

> Myths, that is, narrate not only the origin of the World, of animals, of plants, and of man, but also all the primordial events in consequence of which man became what he is today – mortal, sexed, organized in a society, obliged to work in order to live, and working in accordance with certain rules.[30]

The dominant story of the universe in the West is indeed the Judaeo-Christian story, which has deeply shaped not only our imagination but also our institutions, including the law. According to this story, human beings alone reflect (albeit imperfectly) the image of the sacred, while the Earth and all other beings on Earth are excluded from divinity. The influence of such desacralisation of nature on our culture, as well as on our social and legal systems, is self-evident: in the West, in fact, "Nature is rarely experienced as sacred. When we look for the revelation of the divine in Nature, in cultural values enshrined in custom and law, we do not find it. No *absolute inviolable laws* [...] exist to protect Nature from the excesses of human behaviour."[31] To counter this situation, and inspired by the myth of Gaia, Earth Jurisprudence promotes the development of a legal system based on Wild Law, which should work in accordance with the laws of Nature and in which the universe itself is the source of law and order.[32]

In ancient times (as well as in certain cultures today), there was a fundamental difference between "myth" and "fable" or "tale": while the former was used to refer to a "true story," the latter referred to a "false story."

> This distinction made by natives between "true stories" and "false stories" is significant. Both categories of narratives present "histories," that is, relate a series of events that took place in a distant and fabulous past. Although the actors in myths are usually Gods and Supernatural Beings, while those in tales are heroes or miraculous animals, all the actors share the common trait that they do not belong to the everyday world. Nevertheless, the natives have felt that the two kinds of "stories" are basically different. For everything that the myths relate *concerns them directly,* while the tales and fables refer to events that, even when they have caused changes in the World [...], have not altered the human condition as such.[33]

29 Cashford, *Gaia*, 5.
30 Eliade, *Myth and Reality,* 11.
31 Cashford, *Gaia*, 6
32 See Jules Cashford, "Dedication to Thomas Berry," in *Exploring Wild Law: The Philosophy of Earth Jurisprudence*, ed. Peter Burdon (Kent Town: Wakefield Press, 2011), 3 – 11.
33 Eliade, *Myth and Reality*, 10.

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However, in ancient Greece, the word "myth" (*mythos*) actually referred to stories that tried to explain the origin of the world in an imaginative way – while the "true stories" belonged to the realm of "logos," inspired by reason. Until the Age of the Enlightenment, mythos and logos were different but complementary ways of knowing the world and neither was considered superior to the other. The "imaginative way of knowing" promoted by myths and fables was thus not dismissed as a "lie," but rather valued as a powerful tool for understanding our role in the world.[34]

According to Campbell, myths originally had four functions: 1. A mystical function, that is, "to evoke in the individual a sense of grateful, affirmative awe before the monstrous mystery that is existence"; 2. A cosmological function, that is, "to present an image of the cosmos that will maintain your sense of mystical awe and explain everything that you come into contact with in the universe around you"; 3. A sociological function, that is, "to validate and maintain a certain sociological system: a shared set of rights and wrongs, proprieties or improprieties, on which your particular social unit depends for its existence"; 4. A psychological function, that is, to "carry the individual through the stages of his life, from birth through maturity through senility to death [...] in accords with the social order of his group, the cosmos as understood by his group, and the monstrous mystery."[35]

In our world, the second and third functions have been taken over by science and the law respectively, while for the first and the fourth functions mythology still plays a role. However, the dominant myth of creation put forth by the Judeo-Christian tradition no longer seems to suit our needs: we can all see the devastation of the natural world around us, but our universe story does not indicate us a pattern of behaviour for protecting nature from humans.

> It [is] no coincidence that ours is the age above all others that has desacralized Nature: generally speaking, the Earth is no longer instinctively experienced as a living being as in earlier times, or so it would seem from the evidence of pollution (itself a term that originally meant the profaning of what was sacred). And now is also the time when the whole body of the Earth is threatened in a way unique to the history of the planet.[36]

New questions that cannot be answered by the Judeo-Christian story have arisen from a changed experience of the world, so much so that the old myth can no

34 Cashford, *Gaia*, 11.

35 Joseph Campbell, *Pathways to Bliss: Mythology and Personal Transformation* (Novato, CA: New World Library.2004), 6 – 10.

36 Anne Baring, Jules Cashford, *The Myth of the Goddess: Evolution of an Image* (London: Penguin, 1993), Kindle edition, unpaginated.

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longer guide us, having lost both its magical wonder and its psychological function in most western cultures. The consequence of this is, as Jules Cashford put it, that we are left "*between stories*, cut off from the deepest roots of our being, which relate us to all life."[37]

The role of the myth of Gaia in contemporary law, as endorsed by Earth Jurisprudence, seems to be precisely that of reconciling mythos, fable and logos by providing a new exemplary narrative that sets a pattern for human behaviour and tries to give meaning to life in the contemporary world (which is what myths and fables traditionally do), but that at the same time also appeals to our rational side, showing us the way out of the current crises and suggesting new rules for organising our society.

3. The Myth of Gaia

> We may better appreciate why now in the present we have to look back into the past for an image to carry us forward into the future, if we know a little of who or what Gaia was and is. For Gaia was *both* the name of the Great Mother Goddess Earth *and* the everyday Greek word for earth – only the capital letter distinguished them. This suggests that the physical form of Earth [...] took its reality from the sacred realm [...]. The two terms were permeable to each other, so the early Greek mind could move fluidly between them without having to reach for a different kind of language to explain "which one" was meant: they were one and the same. [...] So "Gaia," as Goddess, ground and globe, was always transparent to the deeper poetic vision. [...] Astonishingly, this was the last time in the west that the Earth was formally revered as sacred – nearly two and a half thousand years ago.[38]

In all four version of the Greek myth of creation, the image of Gaia is present as the mother goddess who brings forth creation from herself. In the Pelasgian myth, Eurynome, The Goddess of All Things, rises naked from Chaos and divides the sea from the sky, dancing upon its waves and setting the wind in motion. She then united with the great serpent Ophion and laid the Universal Egg, which hatched every thing that is in the universe, her children: the sun, the moon, the earth and all living creatures. In the Orphic myth, she is the Goddess of black-winged Night who couples with the Wind and lays a silver egg in the womb of Darkness, from which Eros was hatched and set the Universe in motion. In the Homeric myth – which is in fact a variation of the Pelasgian story –Tethys is the Goddess of the Sea (like Eurynome) and she unites with the serpent Ocean, who circles the Universe like Ophion. Finally, in the Olympian myth the image of

37 Cashford, *Gaia*, 6.
38 Cashford, *Gaia*, 12.

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Gaia is present as Goddess of All, or Mother Earth, who emerges from Chaos and gives birth to all living and non-living things on earth.[39]

So, the Greek Gaia was not only Mother Earth, but the mother who created the universe from herself, and everything was formed from her substance. In contemporary terms, Gaia was a vision of the universe as a dynamic living whole – precisely the interpretation proposed by Lovelock's Gaia Hypothesis[40] and taken as a founding tenet by Earth Jurisprudence.

If we follow Hesiod's *Theogony* (usually considered the first Greek mythical cosmogony) through the various stages of creation and procreation, with Gaia giving birth to children who in turn give birth to their own children and so on, we get to a key moment in this story of origin: the battle between Gaia and Zeus, which the latter wins. It was at this point that a new, masculine image of the divine emerged, and with it a new legal order, based on the rule of opposition and patriarchy. Nonetheless, in the imagination of ancient Greece, Gaia was never forgotten as the mother goddess, and it continued to play a role in all those events that involved the rythms of life, death and rebirth, such as, for instance, the cycle of seasons.

> In this way Gaia continued to be honoured as a living presence whose laws were written into the lives of all creation. It followed that Gaia's law was related to the moral law of human beings, or, we might say, Nature and human nature, at the deepest level, were not separately configured, as they have become today. In other words, the order of nature was for the Greeks a dynamic moral order, implicating human life. [...] It followed that Gaia's law could be profoundly disturbed by the unlawful and immoral behaviour of human beings. [41]

This ancient unity of Nature and Human was broken by the advent of Christianity, with its myth of creation that excluded the feminine principle from the nature of the divine – The Virgin Mary, in fact, is "Queen of Heaven," but not Queen of Earth – and that was founded upon a transcendent God who cursed the Earth for the sins of humanity: "Cursed is the ground for thy sake."[42]

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39 See Robert Graves, *The Greek Myths* [1955] (London: Penguin, 1992).

40 The Gaia Hypothesis was first formulated by James Lovelock in a paper co-authored with Lynn Margulis in 1974 ("Atmospheric Homeostasis by and for the Biosphere: the Gaia Hypothesis," *Tellus* 26.1 – 2: 2 – 10) and then developed by Lovelock in several publications, including *Gaia: A New Look at Life on Earth* (Oxford: Oxford University Press, 1979), *The Ages of Gaia* (Oxford: Oxford University Press, 1988), *The Revenge of Gaia* (London: Allen Lane, 2006) and *The Vanishing Face of Gaia* (New York: Basic Books, 2009).

41 Cashford, *Gaia*, 21

42 *Genesis* 3:17.

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> The problem seems to be perennially one of symbolism and metaphor [...]. For, as Campbell says, whenever the images of myth are taken literally or historically they are killed, and so prevent or obscure their traditional role, which has always been to carry the human psyche forward across those difficult thresholds of transformation which require a change in the patterns of unconscious as well as conscious life. [...]
>
> But when, as in the collective cultural tradition of the west, the awe instinctively due to the sacred mystery of Earth is transferred to a transcendent god and to "the race of man" in his image and in his name, then Earth [...] becomes an object of fear, a chaos to be "dominated" and "subdued," by human beings [...]. Such was the effect of Yahweh's curse upon Earth: nature and spirit split apart – nature was fallen, earth was dust and spirit was transcendent, belonging first to the god (without the goddess) and then to man (without the woman).[43]

However, as we will see in the next paragraph, in the 1970s the ancient myth of Gaia – which, interestingly, does not belong only to the Western tradition but also to other cultures[44] – re-emerged from the past to counter the divergence between human and nature caused by more than two thousand years of Judeo-Christian "mythological conditioning."[45]

4. Gaia as a new fable *for* the law

Since at least 1973, when James Boyd White's *The Legal Imagination* was published, legal and literary scholars have been aware of the importance of stories for the law. However, what may not have been sufficiently underlined yet is that "the choice of *which* stories we tell about the law matters greatly."[46] In fact, we have a tendency not to question familiar narratives, particularly those myths that "practically run in our veins,"[47] such as the Judeo-Christian story of origin. Nonetheless, as history shows, these stories can actually get old and be no longer adequate to answer new questions about our place in the world and our relationship with other human and non-human beings, but most importantly help us establish the basic rules that should govern our behaviour. When this

43 Cashford, *Gaia*, 26

44 In fact, as Cashford notes, "the actual name 'Gaia' comes from India [...], where it appears in the *Vedas* and *Upanishads* in the form of the *Gayatri Mantra*. [...] *Gaya* was also the name of the sacred place where the Buddha attained enlightenment beneath the Bodhi Tree, the Tree of Life." Cashford, *Gaia*, 23 – 24.

45 Frye, *The Great Code*, 12.

46 Linda H. Edwards, "Once Upon a Time in Law: Myth, Metaphor, and Authority," *Tennessee Law Review* 77 (2010): 883 – 916, 884. [Italics mine]

47 Edwards, "Once Upon a Time in Law," 884.

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happens, we need to be able to recognise the limitations of such old stories and seek other, more adequate, fables *for* the law. This is precisely what Earth Jurisprudence is doing in its taking inspiration from the myth of Gaia: it is calling for a new story, one that proposes a vision of the law as aiming to save the planet *from* humans rather than – as anthropocentric stories of origin as well as legal theories and practices suggest – *for* humans.

As Fitzpatrick shows in *The Mythology of Modern Law*, modern law is inherently mythic and shares origins with the mythology of modernity. In fact, even if modern law was formed during the Enlightenment as a reaction against the mythic realm, such a denial was actually just a way of creating a new mythology, in which instead of the mythical creation of an ordered world through a story of origin we have the creation of an ordered society through the Rule of Law.[48] According to Fitzpatrick, modern law originated in Europe from an "Occidental mythology" founded on the opposition between us and "them" (the "savages," women, nature ...), promoting Western ideas such as property and progress. Therefore, "[t]he subject recognized in law is the universal, autonomous individual – the given and ultimate being, 'posited by nature'"[49] – in other words, the universal legal subject is traditionally white, male and Christian.

The exclusion of the feminine principle, as well as of all non-Judeo-Christian mythologies, from Western legal systems has helped to legitimise the superiority of the European man over all other beings and over nature itself. Baring and Cashford trace the origin of such exclusion and of the polarization between humanity and nature back to as early as 2000 BC, when Babylonian mythology started to associate the Goddess with chaotic Nature, and God with the Spirit that ordered Nature:

> for the last 4,000 years, the feminine principle, which manifests mythologically as "the goddess," culturally as the value placed upon relationship with the Earth and the Cosmos, and psychologically as the priority given to spontaneity, feeling, instinct and intuition, had been lost as a valid expression of the sanctity and unity of life. In Judaeo-Christian mythology there is now, formally, no feminine dimension of the divine, since our particular culture is structured in the image of a masculine god who is beyond creation, ordering it from without; he is not within creation, as were the mother goddesses before him. This results, inevitably, in an imbalance of the masculine and feminine principles, which has fundamental implications for how we create our world and live in it.[50]

48 See Peter Fitzpatrick, *The Mythology of Modern Law* [1992] (New York: Taylor & Francis, 2002).

49 Fitzpatrick *The Mythology of Modern Law*, 136.

50 Baring, Cashford, *The Myth of the Goddess*, unpaginated.

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But in the twentieth century, also thanks to the discoveries brought about by the new sciences, the ancient myth of the goddess was revived and it reemerged in a new form,

> not as a personalized image of a female deity, but as what that image represented: a vision of life as a sacred whole in which all life participated in mutual relationship, and where all participants were dynamically "alive." For, beginning with Heisenberg and Einstein, physicists were claiming that in subatomic physics the universe could be understood only as a unity, that this unity was expressed in patterns of relationship, and that the observer was necessarily included in the act of observation. Characteristically, these conclusions were themselves expressed in many of the images that belonged to the old goddess myth. The web of space and time that the mother goddess once spun from her eternal womb [...] had become the "cosmic web" in which all life was related. All the mother goddesses were born from the sea [...]. Now this image has come back into the imagination as the "sea of energy" of the "Implicate Order." James Lovelock's "Gaia Hypothesis" takes its name from the ancient Greek Mother Goddess Earth.[51]

This finally takes us back to the focus of the essay and forward to our conclusion: the influence of Gaia on Earth Jurisprudence.

The image of "Gaia" has reemerged from the ancient times to resurface in contemporary Western thought in the 1970s, apparently thanks to a random chat between physicist James Lovelock and his friend, novelist William Golding: Lovelock was looking for a name for his new hypothesis that the earth has the capacity for homeostasis, that is, that it is a self-regulating system able to adjust in response to external changes. Golding suggested the name "Gaia," the name of the ancient Greek Mother Goddess of All, and so the "Gaia Hypothesis" was born.[52]

The Gaia Hypothesis caught the imagination of the time and it soon became more radical than Lovelock had intended, becoming a synonym for the notion that the earth is a living entity and a symbol for deep ecologists to describe the sacredness of the Earth.

> This "new Gaia" called forth the "old Gaia": they were both animate, intelligent, purposeful – in a word, ensouled – more like a Goddess than a Machine.
>
> In retrospect, then, it seems as if what appeared as coincidence – of the choice of the name of "Gaia" to describe a scientific hypothesis otherwise known as "systems theory" – could be meaningful at a deeper level. Jung had proposed the idea of "Synchronicity" to draw attention to the way that certain events, happening together at the same time, may be connected not by cause but by meaning. In which case, the intuition of meaning may

51 Baring, Cashford, *The Myth of the Goddess*, unpaginated. The reference to the "sea of energy" of the "Implicate Order" is a quotation from David Bohm, *Wholeness and the Implicate Order* (London: Routledge, 1980), 192.

52 Cashford, *Gaia*, 8–9.

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> refer us to a deeper realm which underlies both physical and psychological expression. "In the depths," the poet Rilke says, "all becomes law."[53]

As we have seen, the emergence of Earth Jurisprudence in the 1990s was inspired by the Myth of Gaia. Earth Jurisprudence has revealed how the fable on which current environmental law is founded comes from two thousand years of a mythological conditioning that has taught us to see Nature as separate from Human. In contrast to this, Earth Jurisprudence takes us back to a more ancient story of origin, the myth of Gaia as the Great Mother Earth, Goddess of All. The image of Gaia thus seems to have come back from the depths of our "collective unconscious"[54] to redress the anthropocentric bias of contemporary legal systems and to become a new fable for the law.

53 Cashford, *Gaia*, 9. The quotation from Rilke refers to "Letters to a Young Poet" *[Briefe an einen jungen Dichter, 1902 – 1908]*.

54 See Carl G. Jung, *The Archetypes and the Collective Unconscious* [1959], trans. Gerhard Adler and R. F. C. Hull, in *The Collected Works of C. G. Jung*, vol. 9 (Princeton: Princeton University Press, 1980).

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